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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT ANTHONY MARTINELLI,
Petitioner,
v.
ROBERT NEUSCHMID,
Respondent.

Case No. 18-cv-06030-JD

ORDER OF DISMISSAL

Re: Dkt. Nos. 2, 3

Robert Martinelli, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Court records indicate that petitioner already proceeds with a case in this Court concerning the same underlying conviction. *See Martinelli v. Neuschmid*, Case No. 18-cv-2610 JD. Petitioner may only proceed with one petition concerning a conviction and he must bring all of his claims in that petition. In the earlier filed petition, the Court recently dismissed petitioner's motion for a stay with leave to amend. If petitioner seeks to bring additional claims concerning the underlying conviction he must raise them in the earlier petition and address if they are fully exhausted or if he seeks a stay to exhaust them. This case is dismissed as duplicative. *See Adams v. Cal. Dept. of Health Services*, 487 F.3d 684, 688 (9th Cir. 2007).

CONCLUSION

1. The motion to proceed in forma pauperis (Docket No. 2) is **GRANTED**. The motion to appoint counsel (Docket No. 3) is **DENIED** as this case is **DISMISSED**.

1 2. A certificate of appealability is **DENIED**. The Clerk shall close this case.

2 **IT IS SO ORDERED.**

3 Dated: October 26, 2018

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7 JAMES DONATO
8 United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT ANTHONY MARTINELLI,
Plaintiff,

V.

ROBERT NEUSCHMID,
Defendant.

Case No. 18-cv-06030-JD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 26, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Anthony Martinelli ID: BC-9943
C.S.P. Solano A2-229 L
2100 Peabody Road
P.O. Box 4000
Vacaville, CA 95696

Dated: October 26, 2018

Susan Y. Soong
Clerk, United States District Court

By: Lisa R. Clark
LISAR. CLARK, Deputy Clerk to the
Honorable JAMES DONATO